IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2185 OF 2004

Mr.Raj Kumar Agarwal ...Petitioner

Versus

Llyods Finance Ltd. & Anr. ...Respondents

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Mr.S.V.Marwadi for Petitioner.

Mr.Kafil Khan for Respondent No.1.

Mr.S.R.Shinde, A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

DECEMBER 21, 2004.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Khan waives notice for Respondent No.1. Mr.Shinde, A.P.P. waives notice for Respondent No.2.

3. As short question is involved, the matter is taken up for final disposal forthwith, by

consent.

4. The short question involved in the present case is: whether any case is made out against the present Applicant/accused No.5 in the complaint as filed by the Respondent No.1 for offence committed by the accused No.2 Company? The only allegation in the complaint to implicate the Applicant, can be discerned from Para 2, wherein, it is alleged that the Applicant was Director of the accused No.2 Company. In that capacity, he was in-charge of, and responsible for the conduct of business of accused No.2 Company. It is also alleged that the accused Nos.3 to 5 have consented and/or connived at in the commission of offence committed by accused No.2 Company and the offence is attributable to accused Nos.3 to 5 on account of their neglect to ensure and make adequate arrangements to honour the cheques issued by Accused No.2.

5. The case of the Applicant is that although the Applicant was Director at the time when the cheque was issued, but he did not continue as

Director when the cheque was actually presented and the offence in question took place, inasmuch as he had resigned as Director much before that. Besides, he was not the signatory to the cheques in question. Be that as it may, the fact remains that the compliant merely recites the language of the Section, without providing for material facts, so as to indicate the complicity of the Applicant in respect of the offence committed by the accused No.2 Company. Merely being a Director, does not make a person liable for the offence committed by the Company. Something more is required to be alleged and established. As mentioned earlier, no material facts have been set out in the complaint, so as to indicate the complicity of the Applicant. I had occasion to examine this aspect in **Criminal Writ Petition No.2241 of 2004 - Madanlal Taparia & Anr. vs. The Bank of Rajasthan Ltd. & Anr. decided on 14th December 2004.**

6. In the circumstances, this Application succeeds and the same is allowed in terms of prayer clause (b), insofar as Applicant/accused No.5 is concerned.

A.M.KHANWILKAR, J.